

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEANDER J. GREGG,

Plaintiff,

v.

CORRECT CARE SOLUTIONS,
OFFICER NICHOLAS KERNS,
OFFICER DANIEL OATES
and DAVID PETERSON,

Defendants.

ORDER

19-cv-133-bbc

Pro se plaintiff LeAnder J. Gregg is proceeding on claims under the Eighth and Fourteenth Amendments that staff at the Eau Claire County jail gave him medication belonging to another inmate and then refused to provide him medical treatment after he suffered adverse affects. Defendants Nicholas Kerns and Daniel Oates, officers at the jail, have filed a motion to dismiss on the grounds that plaintiff failed to exhaust his administrative remedies before filing this lawsuit. Dkt. #35. These defendants have submitted evidence showing that although plaintiff filed a timely grievance about the incident in July 2019, he failed to file a timely appeal to the sergeant, as required by the jail's grievance procedures, when his grievance was denied. Dkt. #37, Decl. of Lt. Dave Riewestahl. The remaining defendants, Correct Care Solutions and Nurse David Peterson, have filed a motion to join the motion to dismiss filed by Kerns and Oates. Dkt. #39.

Plaintiff's deadline for responding to defendants' motion to dismiss was December

31, 2019, but the court has not received a response brief from plaintiff. On March 30, 2020, the court received a facsimile communication from plaintiff, stating that he is incarcerated at the Pierce County jail, that he had filed a response to defendants' motion to dismiss, that he exhausted all of his jail remedies and that he wants an update on the status of his case. Dkt. #41. Because plaintiff says that he sent a response brief that the court did not receive, I will construe his facsimile as a motion requesting additional time to refile his brief, and I will grant the motion. However, if the court does not receive plaintiff's response brief by the deadline set forth below, I will resolve defendants' motion based solely on the evidence and arguments presented by defendants. Plaintiff is reminded that the court will not accept his brief if it is submitted by facsimile. He must mail his brief to the court.

ORDER

IT IS ORDERED that

1. Defendants Correct Care Solutions and David Peterson's motion to join the motion to dismiss filed by defendants Nicholas Kerns and Daniel Oates, dkt. #39, is GRANTED.

2. Plaintiff LeAnder J. Gregg's motion for an extension of time to file his brief in opposition to defendants' motion to dismiss on exhaustion grounds, dkt. #41, is GRANTED. Plaintiff may have until May 1, 2020 to file his opposition brief. If he does

not file his brief by May 1, I will resolve defendants' motions based solely on the evidence and arguments presented by defendants.

Entered this 13th day of April, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge